

**IN THE INCOME TAX APPELLATE TRIBUNAL “B(SMC)” BENCH: KOLKATA**  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 140/Kol/2022**  
**Assessment Year : 2010-11**

Shrabani Ghosh (PAN: ANFPG 7096 Q)	Vs.	ITO, Ward-23(1), Hooghly
Appellant		Respondent

Date of Hearing	01.09.2022
Date of Pronouncement	28.09.2022
For the Appellant	Shri Somnath Ghosh, Advocate
For the Respondent	Shri Partha Pratim Barman, ACIT

**ORDER**

**Per Shri Sonjoy Sarma, JM:**

This appeal is preferred by the assessee against the order passed by National Faceless Appeal Centre [hereinafter referred to as ‘CIT’] dated 11.03.2022 passed u/s 250 of the Income-tax Act, 1961. The assessee has taken the following grounds of appeal:

*“i. For that the ld. CIT(A), NFAC, Kolkata failed to appreciate that none of the conditions precedent existed and/or have been complied with and/or fulfilled by the ld. Income Tax Officer, Ward-26(2), Kolkata for his assumption of jurisdiction u/s 147 of the Income Tax Act, 1961 and the alleged assessment order dated 12.03.2015 passed u/s 147/143(3) of the Act by the ld. Income Tax Officer, Ward-23(1), Hooghly in pursuance to the impugned notice dated 21.08.2014 issued u/s 148 of the Act is therefore ab initio void, ultra vires and null in law.*

*ii. For that the ld. CIT(A), NFACT acted unlawfully in not considering that the purported addition in the amount of Rs. 1,00,000/- made by the ld. ITO, Ward-23(1), Hooghly within the province of section 69 of the Income Tax Act, 1961 was duly explained and the alleged finding on that issue is wholly arbitrary, unwarranted and perverse.*

*iii. For that on the facts and in the circumstances of the instant case, the ld. CIT(A), Burdwan was wholly in error in upholding the addition in the sum of Rs. 1,03,540/- resorted to by the ld. Income Tax Officer, Ward-23(1), Hooghly by invoking the provisions of section 69 of the Income Tax Act, 1961 and the specious action on that behalf indulging in surmise, suspicion and conjecture is totally illegal, illegitimate and infirm in law.*

*iv. For that the ld. CIT(A), Burdwan was remiss in upholding the alleged addition to the tune of Rs. 1,03,540/- resorted to by the ld. Income Tax Officer, Ward-23(1), Hooghly on account of undisclosed payments thereof and such adverse finding reached on extraneous consideration not germane to the issue is altogether unfounded, unjustified and untenable in law."*

2. Brief facts of the case are that the assessee is an individual and she derived her income from salary for the assessment year in question. The assessee filed her original return of income on 31.03.2011 showing salary income from the department of Education & Training of Rs. 1,41,963/-. As per the information available with the AO, he had received information that salary income from M/s. M.N. Dastur & Co. Pvt. Ltd. which was not disclosed by assessee in her original return. Therefore, notice u/s 148 was issued for reopening the assessment. In response to the notices, the assessee filed here revised return of income on 27.12.2013 declaring income from department of Education and Training of Rs. 1,41,963/- and also income from M/s. M.N. Dastur & Co. Pvt. Ltd. of Rs. 2,62,934/-. During the course of re-assessment proceedings, the AO found that the addition to salary income from the said entities, the assessee also deals in share transactions and he observed that the source of amount deposited in assessee's account with Indian Bank on 07.04.2009 & 26.06.2009 vide cheque no. 926318 & 966319 of Rs. 50,000/- cash could not be established. As the assessee failed to explain the source of these aggregate deposits of Rs. 1,00,000/- and the AO treated the same as unexplained income and added to the income of the assessee. The AO further observed that during the relevant year, the assessee had purchased aggregate value of share of Rs. 2,53,98,134/- and sold shares of aggregate value of Rs. 2,50,88,423/- and she suffered a loss of Rs. 3,09,711/-. The assessee explained that in respect of this loss, she had paid cash to the share broker through her account with Axis Bank. However, the AO found that the cash withdrawn during the relevant year from the said account was of only Rs. 2,06,171/-. Accordingly, he added the difference of Rs. 1,03,540/- (Rs. 3,09,711/- minus Rs. 2,06,171/-) as undisclosed investment u/s 69 of the Act.

3. Aggrieved by the order of ld. AO, the assessee preferred an appeal before the ld. CIT(A) and appeal of the assessee was partly allowed by the ld. CIT(A).

4. Dissatisfied with the above order, the appellant filed instant appeal before this Tribunal raising almost 4 grounds of appeal. At the time of hearing, the ld. AR of the assessee submitted that ground no. 1 is legal ground and before taking into consideration of this ground, he would like to address ground no. 2 & 3 before us and he brought to our notice to the Paper Book containing 51 pages in which inserted various documents in support of his claim and he submitted in respect of issue no 2 that it is an admitted fact that the appellant received amount of Rs. 1,65,000/- from her husband through banking channel and the claim of the assessee was disbelieved by the AO on the ground that she failed to prove the creditworthiness of the donor. In order to substantiate his claim he submitted the balance sheet of donor as on 31.03.2010 incorporating the gift was filed along with the return of income on 31.03.2011 with the ITO, Ward-1(4), Burdwan. However, no independent enquiry was made by the AO and further it is an admitted fact that detail of the donor was already with him and on which a simple enquiry would have been resolved the issue. However, he did not do so and in such a situation, the assessee will be deemed to have discharged his burden when all information was supplied to the Assessing Officer who had not pursued the matter. In this context, he cited the decision of Hon'ble Supreme Court rendered in CIT vs Orissa Corporation Ltd. (1986) 159 ITR 78 (SC) and considering the same issues raised by the appellant assessee may be allowed. On the other hand, the ld. DR relied on the decision of AO as well as ld. CIT(A).

5. We after hearing the rival submission and the document demonstrate before us by the ld. AR and going through the balance sheet of the donor viz. Shri Malay Ghosh. We find that gift of Rs. 1,65,000/- have been given by donor to his wife namely Shrabani Ghosh as such we find force in the contention of the ld. AR, accordingly the issue raised by the assessee is allowed.

6. Further in respect of issue no. 3, the ld. AR of the assessee submitted before us that the assessee had made two payments of Rs. 50,000/- each on 06.04.2009 and 25.05.2009 through her salary account with Indian Bank to the broker, India Infoline Ltd. which the ld. Assessing Officer had convoluted her transactions with that of her husband. However, he submitted that there was an opening balance of an amount of Rs. 11,754/- as on 01.04.2009 with India Infoline Ltd., thereafter assessee had paid Rs. 3,06,000/- to broker due to transactions made during the relevant previous year wherein an amount of Rs. 3,09,160/- was debited on account of loss incurred and therefore, an amount of Rs. 8,594/- was also lying as closing balance on 31.03.2010. However at the time of assessment proceeding, the AO chose to ignore such explanation submitted by the assessee and as such the addition made by the authorities below required to be deleted. On this issue, we have heard the submission of ld. DR and also he relied on the orders passed by the authorities below. We after hearing the rival submission of the party and perusing the documents produced by the AR of the assessee and material available on record, we find that the ld. AR has substantiated the claim of assessee and in furtherance to such claims, he produced evidence before us to prove the fact and considering the same, we allow this ground in favour of the assessee.

8. Since, we have allowed the appeal of the assessee on merits of the case, therefore, the remaining ground need not required to be adjudicated, accordingly, the appeal of the assessee is allowed.

9. In the result, the appeal of the assessee stands allowed.

Order is pronounced in the open court on 28<sup>th</sup> September, 2022

Sd/-

(Rajesh Kumar)  
Accountant Member

*Biswajit, Sr. PS*

Sd/-

(Sonjoy Sarma)  
Judicial Member

Dated: 28<sup>th</sup> September, 2022

Copy of the order forwarded to:

1. Appellant- Shrabani Ghosh, C/o. S.N. Ghosh & Associates, Advocates, “Sagar Mansion”, 2, Garstin Place, 2<sup>nd</sup> Floor, Suite Nos. 202 & 203, Hare Street, Kolkata – 700001.
2. Respondent – ITO, Ward-23(1), Kolkata
3. Ld. CIT(A)- Kolkata.
4. DR, Kolkata.

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata